

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

California Independent System Operator Corporation Docket Nos. ER05-405-002 and
ER05-407-002
(Not Consolidated)

ORDER ON REHEARING

(Issued June 3, 2005)

1. In this order, the Commission addresses requests for rehearing or clarification of its February 28, 2005 Order¹ that accepted two filings submitted pursuant to section 205 of the Federal Power Act (FPA)² by the California Independent System Operator Corporation (CAISO) on December 30, 2004, subject to modification and clarification. The Commission will deny the requests for rehearing filed by Southern California Edison Company (SCE) and grant clarification requested by CAISO. The Commission's order benefits customers by reaffirming clear operational protocols and relationships between CAISO and non-members of the CAISO under the operating agreements in these proceedings, thereby ensuring reliable service for all customers.

2. The agreements in question were filed in separate dockets. The agreement in Docket No. ER05-405-000 is an Interim Operations Agreement (Turlock Interim Operations Agreement) between the CAISO and Turlock Irrigation District (Turlock) that governs the operational relationship between CAISO and Turlock with respect to Turlock's transmission of power over Turlock's transmission facilities that are in the CAISO Control Area but are not part of the CAISO Controlled Grid. The agreement in Docket No. ER05-407-000 is a nearly identical Operations Agreement (Modesto Operations Agreement) between the CAISO and Modesto Irrigation District (Modesto) that governs the operational relationship between CAISO and Modesto with respect to

¹ *California Independent System Operator Corporation*, 110 FERC ¶ 61,196 (2005) (February 28 Order).

² 16 U.S.C. § 824d (2000).

Modesto's transmission of power over Modesto's transmission facilities that are in the CAISO Control Area but are not part of the CAISO Controlled Grid. The purpose of these agreements is to coordinate the use by Turlock and Modesto of their non-CAISO Controlled Grid facilities with the planned change in Control Area boundaries resulting from the decision of Western Area Power Administration (Western) to join the Control Area of the Sacramento Municipal Utility District (SMUD) as of January 1, 2005. These agreements serve to clarify the operational relationships between the CAISO and Turlock and the CAISO and Modesto.

3. The Turlock and Modesto Operations Agreements bar them from scheduling transactions over the CAISO Controlled Grid; so all Turlock and Modesto transactions that use the CAISO Controlled Grid are done so in accordance with the CAISO Tariff. For the energy that Turlock and Modesto exchange with the SMUD Control Area without using the CAISO Controlled Grid, the Operations Agreements address such issues as operating requests, maintenance, outages, emergency response, studies, schedules, emergencies, voltage control, reactive support, and removal from and restoration to service.³ Under the Operations Agreements, the CAISO charges Turlock and Modesto for the transmission of power over non-CAISO Grid Facilities that are in the CAISO Control Area. Specifically, CAISO will bill Turlock and Modesto for its Grid Management Charge plus charges for ancillary services, imbalance energy, and losses to the extent these are not self-procured or self-provided. CAISO will not assess any other charges to Turlock and Modesto.

4. CAISO's filings also state that the use by Turlock and Modesto of their own transmission facilities, which are not part of the CAISO Controlled Grid, should not be subject to the charges for Startup, Emissions, and Minimum Load Cost Compensation

³ The Operations Agreements also enable the parties to meet the requirements of two other agreements already approved by the Commission to facilitate the transfer of Western's facilities into the SMUD Control Area: (1) the SMUD-CAISO Interconnected Control Area Operating Agreement Incorporating Amendment No. 2 (Docket No. ER05-149-000), which requires that all energy scheduled to or from the CAISO Control Area over any facilities within the ISO Control Area be submitted via the CAISO scheduling system; and, (2) the Pacific Intertie/California-Oregon Transmission Project Owners-CAISO Owners Coordinated Operation Agreement (Docket No. ER04-693-001), which requires each owner to make arrangements with CAISO, because it is the Control Area Operator of the Intertie/California-Oregon Transmission Project system. *See California Independent System Operator Corporation*, 109 FERC ¶ 61,391 (2004), *reh'g pending* (Docket No. ER05-149-000, *et al.*) and *Pacific Gas and Electric Company*, 109 FERC ¶ 61,255 (2004) (Docket No. ER04-693-000, *et al.*).

(Must-Offer Charges), “contrary to the ISO tariff and Commission orders which require that these charges be assessed to Control Area Gross Load and exports to other control areas within California.”⁴ This exception, CAISO states, was agreed to as part of the overall settlement of issues raised by Western joining the SMUD control area. It also says that the exception would be minor and interim in nature. The parties also agree to abide by the Western Electricity Coordinating Council Reliability Criteria Agreement for Generators and Qualified Path Unscheduled Flow Relief.

I. Requests for Clarification and Rehearing

A. CAISO’s Request for Clarification

5. CAISO seeks clarification of two references in the February 28 Order that make assertions that are mutually exclusive, which in turn makes the February 28 Order internally inconsistent. In the first reference cited by CAISO, the Commission correctly describes in Paragraph 9 the exemption in the Modesto and Turlock operating agreements from the Must-Offer Charges in CAISO’s tariff as being part of the overall settlement of issues raised by Western joining the SMUD control area: “In fact, but for the overall settlement . . . , the [Must-Offer Charges] *would have* been assessed to Turlock and Modesto pursuant to the [CA]ISO Tariff and Commission orders.”⁵

6. However, CAISO then asserts that the Commission, in Paragraph 26 of the February 28 Order, incorrectly describes the reason the Must-Offer Charges do not apply under section 6.3 of the Modesto and Turlock agreements as being due to the fact that “this capacity is not under CAISO operational control and does not utilize the CAISO controlled grid. However, with respect to capacity of Modesto or Turlock that, in fact, does use the CAISO grid, all applicable CAISO tariff charges apply.”⁶ CAISO asserts that it never stated that the Must-Offer Charges would not apply because the CAISO controlled grid is not used. Thus, CAISO asks that the Commission clarify that the exemption from the Must-Offer Charges is the result of the overall settlement of issues raised by Western joining the SMUD control area. In a similar vein, SCE seeks

⁴ Turlock Motion to Intervene and Modesto Motion to Intervene at 5.

⁵ CAISO at 2.

⁶ *Id.* at 3, *citing* the February 28 Order at P 26.

rehearing of the Commission's description of the exemption in Paragraph 26, stating that it is "plainly erroneous."⁷

Commission Determination

7. The Commission will grant CAISO's request for clarification. Despite the fact that Paragraph 26 of the February 28 Order described the rationale for the exemptions incorrectly, the earlier description in Paragraph 9 is accurate and supports the contention that the exemptions in the Modesto and Turlock agreements were based on the overall settlement of issues related to the Western move into the SMUD control area. The Modesto and Turlock Agreements granted an exemption from these charges that is identical to the exemption granted to Western in its agreement. The exemption granted to Western in section 6.3 of the PACI-W Operating Agreement and approved in Docket No. ER05-155-000 was filed with the Commission as a result of the settlement filed in Docket Nos. ER04-688, *et al.*⁸ In that order, the Commission found that the PACI-W agreement was but one part of the overall package contemplated in the settlement and was necessary in order to afford the CAISO the continued operational authority over the California-Oregon Intertie (COI). Thus, despite the fact that Paragraph 26 of the February 28 Order described the rationale for the exemptions incorrectly, the earlier description in Paragraph 9 is accurate and supports the contention that the exemptions in the Modesto and Turlock agreements were based on the overall settlement of issues related to the termination of PG&E contracts with Western and the move to unbundled services. These issues are described in a concurrently issued order in Docket No. ER05-149-000, *et al.* Additionally, because Modesto and Turlock are customers of Western, it naturally flows that the exemption would also flow through them as well. This clarification should also address SCE's request for rehearing as to the Commission's basis for approving the exemption. Thus, given this clarification, there is no reason to discuss further SCE's request for rehearing on this issue.

⁷ SCE at 2, 3 - 8.

⁸ *California Independent System Operator Corporation*, 109 FERC ¶ 61,391 (2004).

B. SCE's Request for Rehearing

8. SCE specifies several errors for which the Commission should grant rehearing:
- 1) The Commission erred in basing its approval of the Modesto and Turlock Agreements' exemption from the Must-Offer Charges on the fact that the CAISO controlled grid was not used by Turlock and Modesto;
 - 2) In approving the exemptions from the Must-Offer Charges, the Commission made an "unexplained departure from established precedent" that users of non-CAISO controlled grid facilities must pay the Must-Offer Charges.
 - 3) The Commission erred to the extent it found that the allocation of costs (including Must-Offer Charges) to the Scheduling Coordinators for Turlock and Modesto was settled or decided in other dockets.
 - 4) The Commission erred to the extent it determined that the Modesto and Turlock Agreements will eliminate the potential for rate pancaking.
 - 5) The Commission erred in failing to address SCE's contention that the agreements are unduly discriminatory and result in unnecessary cost-shifting to others who continue to pay Must-Offer Charges.

The first issue cited by SCE was addressed above in the discussion of the CAISO request for clarification. The remaining errors alleged by SCE are discussed below.

1. Departure from Commission Precedent

9. SCE alleges that the Commission's approval of the exemptions from the Must-Offer Charges is a departure from established precedent for which the Commission failed to provide explanation.⁹ SCE explains that the issue of whether Must-Offer Charges should apply to Control Area Gross Load and Demand or In-State Demand has been fully litigated in prior proceedings where the Commission determined that the Must-Offer Charges would apply to such loads.¹⁰

⁹ SCE at 7, citing *Entergy Services Inc. v. FERC*, 391 F.3d 1240, 1251 (2004).

¹⁰ SCE at 5 - 7, citing *San Diego Gas & Electric Company*, 97 FERC ¶ 61,293 (2001), *reh'g*, 99 FERC ¶ 61,159 (2002).

Commission Determination

10. SCE is correct in its explication of the Commission's prior determinations about the applicability of Must-Offer Charges. However, what SCE fails to acknowledge is that the exemptions in the Modesto and Turlock Agreements are an outgrowth of and intended to implement the overall settlement as discussed above. Thus, the Commission will deny SCE's request for rehearing on this issue.

2. Applicability of Other Dockets to the Instant Proceedings

11. As it did in its protests in these proceedings, SCE's rehearing request continues to argue that the exemptions from the Must-Offer Charges were not previously negotiated in the settlement in Docket Nos. ER04-688, *et al.*, and it urges the Commission not to "accept the [CA]ISO's continued attempt to expand the scope of the Settlement in Docket Nos. ER04-688, *et al.* to include any Must-Offer Charge exemptions that were not actually negotiated there."¹¹ SCE asserts that the only exemption from the Must-Offer Charges that were included in the Settlement "had no application to" Modesto and Turlock, and thus "the Agreements and the exemption at issue here plainly were not settled or negotiated in *that* docket."¹²

Commission Determination

12. In the Docket No. ER05-155 proceeding, CAISO pointed out that "this exemption does not apply to all non-Participating TO (non-PTO) [California-Oregon Transmission Project] participants, but only to Load served in the SMUD Control Area and to the Modesto and Turlock Irrigation Districts."¹³ As the Commission observed in the February 28 Order, SCE has raised this same issue of cost allocation twice before, and the Commission has approved the exemption as being a part of the overall settlement of issues associated with the COI. The rationale in prior orders, and in an order issued concurrently in Docket No. ER05-149-000, *et al.*, supporting the exemptions granted to Modesto and Turlock in the instant proceeding has been set out

¹¹ SCE at 8.

¹² *Id.* at 9.

¹³ CAISO Motion for Leave to File Answer One Day Out of Time and Answer to Motions to Intervene, Protests, Answers, and Comments filed December 8, 2004 in Docket No. ER05-155 at 10.

and fully explained. Because SCE has provided no new or different justification for its position, the Commission will deny rehearing on this issue.

3. Potential Rate Pancaking Impacts

13. SCE argues that, because the Commission failed to support its determination that the Must-Offer Charge exemptions for Modesto and Turlock “were somehow part of the negotiated Settlement,” it must then provide an “independent reason” to find the exemptions to be just and reasonable. Implying that the Commission’s discussion of the impact of the Agreements on rate pancaking was devised to provide that “independent reason,” SCE asserts that the exemptions do not prevent rate pancaking. SCE goes further to allege that no rate pancaking would occur even without the exemptions: “An entity using both Turlock or Modesto facilities and [CA]ISO Controlled Grid facilities could not be assessed Must-Offer Charges twice *even without the exemption*.”¹⁴ Finally, SCE alleges that “If the Commission’s intent was to prevent rate pancaking, it fails to explain why it would allow Turlock and Modesto to continue to charge others for use of their transmission facilities rather than prohibiting such pancaked charges.”¹⁵

Commission Determination

14. SCE’s concern about the effect on rate pancaking that might result from the Must-Offer exemption is not persuasive. The February 28 Order cited the orders in Docket No. ER04-688, *et al.* and Docket No. ER05-155 as finding that the overall package of agreements in these proceedings “will benefit customers by facilitating access to Pacific Northwest transmission capacity at non-pancaked rates.”¹⁶ The Commission did not say in those proceedings that the Must-Offer exemption was *necessary* to prevent rate pancaking. Rather, the Commission only addressed the rate pancaking of charges and the fact that there would be no pancaking of charges on the California-Oregon Transmission Project facilities controlled by the CAISO under the Interim California-Oregon Transmission Project Agreement. In short, the overall package of agreements was intended to facilitate access and continuation of reliable service. One of the many parts of the settlement was the exemption from Must-Offer Charges to Western, Turlock and Modesto. Therefore, because it is a part of an overall

¹⁴ SCE at 15.

¹⁵ *Id.* at 17, citing *Keyspan-Ravenswood*, 348 F.3d at 1056.

¹⁶ February 28 Order at P 29.

settlement that is effectuated through various individual agreements such as the instant agreements, the Commission denies SCE's request for rehearing on this issue.

4. SCE's Discrimination and Cost-shifting Concerns

15. SCE claims that the Commission's February 28 Order did not address its contention that the Must-Offer exemptions are discriminatory and result in improper cost-shifting. SCE claims that the Must-Offer exemption is discriminatory, because the CAISO Tariff imposes the Must-Offer Charges on other entities that use non-CAISO facilities located in the CAISO Control Area to export power to load in California. The Commission's failure to explain why this is not discriminatory is "clear legal error."¹⁷

16. Similarly, SCE alleges that the Commission failed to take into account the fact that, by exempting Modesto and Turlock from the Must-Offer Charges, costs associated with the exemptions will be borne by customers. The resulting cost-shift is discriminatory: "SCE has agreements with the [CA]ISO, such as the Transmission Control Agreement, yet SCE has never received a Must-Offer Charge exemption."¹⁸

Commission Determination

17. SCE is correct in asserting that the Commission did not respond directly to its concerns about the discriminatory impact of the Must-Offer exemption, except to mention the fact that SCE raised concerns about the unfair impact of cost-shifts that it asserted will result from the exemptions.¹⁹ Again, to address these concerns, one must view these agreements in the context of the negotiated settlement in Docket No. ER04-688, *et al.* This settlement necessitated measures to resolve the transmission rights of Modesto and Turlock once Western terminated its prior agreements as part of the CAISO Controlled Grid and moved to the SMUD Control Area.

18. According to CAISO, the waiver of a limited number of costs, including the Must-Offer Charges, was an essential feature of the settlement and is reflected in the Pacific AC Intertie-West Operating Agreement and the Interim Control Area Agreement.²⁰ Although the Agreements provide the Must-Offer Charge exemption,

¹⁷ SCE at 17.

¹⁸ *Id.* at 18.

¹⁹ February 28 Order at P 11 – 13.

²⁰ CAISO Answers to SCE Protests at 5.

Modesto and Turlock have agreed to accept responsibility for other charges (the costs of non-self-provided Ancillary Services, Imbalance Energy and Losses) for which the Commission has previously ruled they are not responsible.

19. Both Western and the Transmission Agency of Northern California (TANC) were directly affected by the changes in Control Area boundaries, and the settlement in Docket No. ER05-688, *et al.* involved cost allocations intended to address those impacts. Because Modesto and Turlock are also directly affected by the change in Control Area boundaries, the Modesto and Turlock Operating Agreements provide the same cost allocations as in the settlement. To do otherwise would have discriminated against Modesto and Turlock. SCE has not provided any evidence that it is similarly situated to Modesto and Turlock, and hence its concerns about the discriminatory impact of the Agreements are unconvincing. Because SCE's has provided nothing but vague speculation about potential cost shifts resulting from the Must-Offer exemption, the Commission likewise finds its concerns unavailing. Therefore, the Commission denies rehearing on these issues.

The Commission orders:

(A) SCE's request for rehearing is denied, as discussed in the body of this order.

(B) CAISO's request for clarification is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.